

7:30 PM

MINUTES

**PRESENT:**           **R. Dodds**  
                          **D. Haywood**  
                          **T. Kratzer**  
                          **P. Lubitz**  
                          **J. Mathieu**  
                          **S. McNicol**  
                          **E. Niemann**  
                          **J. Strasser**  
                          **M. Syrnick, Alt #1**  
                          **D. Banisch, Planner**  
                          **T. Decker, Engineer**  
                          **D. Pierce, Attorney**

**CALL TO ORDER**

The meeting was called to order by D. Laudenschlager at 7:30 PM.

**NOTIFICATION**

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Courier News, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

**NEW AND PENDING MATTERS**

R. Dodds announced Planning Board member L. Senus was resigning from her position on the Board due to a job transfer.

**Re-Organization:**

**Nomination of Chairperson**

J. Mathieu moved and J. Strasser seconded to nominate R. Dodds as Chairperson for 2012.

It was moved by J. Mathieu, seconded by P. Lubitz, and carried to close the nomination. All members present voted **AYE** on **ROLL CALL VOTE**.

**Nomination of Vice Chairperson**

J. Mathieu moved and S. McNicol seconded to nominate D. Haywood as Vice-Chairperson for 2012.

It was moved by P. Lubitz, seconded by M. Synchron and carried to close the nomination. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Appointment of Attorney**

It was moved by D. Haywood, seconded by J. Strasser and carried to appoint Lindabury, McCormick and Estabrook, D. Pierce as attorney for 2012. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Appointment of Engineer**

It was moved by J. Mathieu, seconded by S. McNicol and carried to appoint Van Cleef Engineering, T. Decker as engineer for 2012. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Appointment of Planner**

It was moved by J. Mathieu, seconded by D. Haywood and carried to appoint Banisch and Associates, D. Banisch as planner for 2012. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Approval of Meeting Dates**

It was moved by P. Lubitz, seconded by D. Haywood and carried to approve the following dates for the 2012 Planning Board meetings beginning at 7:30 PM:

February 9, 2012	July 12, 2012
March 8, 2012	August 9, 2012
April 12, 2012	September 13, 2012
May 10, 2012	October 11, 2012
June 14, 2012	November 8, 2012
	December 13, 2012

All members present voted **AYE** on **ROLL CALL VOTE**.

### **Designation of Newspaper**

It was moved by S. McNicol, seconded by D. Haywood and carried to designate the Hunterdon County Democrat as the official newspaper for 2012 with the Courier News as the alternate. All members present voted **AYE** on **ROLL CALL VOTE**.

J. Strasser and T. Kratzer recused themselves from their positions on the Board for the following matter.

### **EffiSolar – Block 23, Lot 11 – Route 519 –Final Application for Phase I and Resolution Compliance for Phase I and II Preliminary Approval**

J. Guinco, attorney for the applicant stated the applicant is seeking resolution compliance for Phase I and II. J. Algeo of Maser Associates will be making the presentation this evening.

J. Algeo was sworn in by D. Pierce.

J. Algeo provided her credentials to the Board. The Board accepted J. Algeo as a professional engineer.

J. Algeo stated the final plan is consistent with the preliminary approval. The plan is in compliance with the reviews of the professionals.

In regard to the review letter of Van Cleef and Associates, J. Algeo stated the applicant would like to address Item #10P, which address the location of the shut off switches. She stated the applicant would like to be able to submit the location of all shut off switches at the time of submission for a building permit. She stated they will be included in the electrical plan submitted for the building permit. T. Decker was agreeable. She stated the applicant would like to also address Item #16, which addresses the submission of an Emergency Response Plan. She stated that is something that is submitted prior to the building permits being issued. T. Decker stated prior to the pre-construction meeting for the project the Emergency Response Plan should be reviewed by the fire official and written confirmation will be required from Chief Floyd that the the Plan is acceptable. J. Algeo stated the applicant is agreeable to all the other items of the review letter.

In regard to the review letter of Banisch and Associates, J. Algeo stated the applicant is agreeable to the comments made in the review letter.

T. Decker stated all the technical issues and requirements were addressed in the preliminary approval conditions. The conditions of preliminary approval need to be satisfied. Most of the other comments have to deal with DEP approval for Phase II and other outside agencies. There are items which need to be provided prior to construction. Most of the conditions of preliminary approval would basically continue into conditions of final approval. J. Guinco stated the applications to the outside agencies have been submitted and are now completed.

D. Banisch stated he wanted to make sure that the landscaping notes were appropriate to the sensitive areas and addressed through post installation inspection. J. Guinco stated the review letter reflects what the applicant has discussed at the preliminary approval and has agreed to as part of approval.

D. Pierce stated the applicant, in their compliance review letter, indicated that the deed restriction to the open land is only temporary for the period of time that the facility is being used as a solar facility. The ordinance requires it be permanently restricted. J. Guinco stated the applicant understands the terms of the ordinance and will comply with it. D. Pierce stated the preliminary approval did not specify compliance time with some of the conditions, such as the Emergency Response Plan be completed and reviewed before the pre-construction meeting. There are other items which need to be completed before the building permit is issued, before the Certificate of Occupancy is issued and the final site plan is signed by the Board. D. Pierce will prepare a draft resolution and have it reviewed by J. Guinco. D. Pierce stated, on the Garden Solar application, they provide the fire company with a training video. It was not referenced in the original preliminary approval. J. Guinco stated it should not be a problem.

D. Pierce stated the following additional conditions should be added:

- ◆ Revision of the plans and project documents to satisfy the comments of the review letters of T. Decker of January 10 and D. Banisch of January 12, subject to the exceptions discussed in Paragraph 10P of the approval relating to the shut off switches and the emergency response plan;
- ◆ Require the applicant submit one copy of an as-built drawing for the project in electronic

form and hard copy upon completion of the project;

- ◆ Require the applicant to enter into a developer's agreement approved by the Township Committee that contains the appropriate provisions for bonding or completion of public improvements and bonding of the landscape maintenance guarantee prior to the issuance of any Certificate of Occupancy or Completion;

J. Guinco stated the above conditions were ones they would anticipate.

D. Pierce stated there are several conditions of preliminary approval that have been completed by the applicant: #s 10 a – e, g-m and n & p, 10, 11, 12, 13, 14, 15, 17, 23, 33 & 48.

S. McNicol stated in D. Banisch's review letter, #7, that the applicant was going to add 120 Eastern Red Cedar trees but D. Banisch's recommendation was to supply other trees. She stated the Norway Spruce is not a recommended native tree. D. Banisch responded it is not native but has been used on the Garden Solar sites. It has been found that the indigenous species were not affected. There were a great number of objections of the neighbors of the property. It is a deviation of the native species. They will be planted at strategic locations to be more effective for a better buffer. D. Banisch stated they are not invasive but non-native. The new planting arrangement will deal better with certain visibility issues. There will be 60 of them for most of the buffer.

C. Compton, Captain Kingwood Township Rescue Squad stated the rescue squad has been kept out of the whole thing. She just picked up the plans from the Township building and is reviewing the plan. There is no mention of the rescue squad. There is more need for the rescue squad to know what is being done. During construction the rescue squad is more apt to be called for a worker. The rescue squad is feeling very neglected.

R. Dodds stated it is not the intention of the Planning Board to ignore the rescue squad. In the past it has been Chief Floyd and his wife, who was the former captain. The Board made some assumptions.

J. Guinco stated the applicant is willing to include the rescue squad with the training. He will provide two copies of the video.

C. Compton stated they are two separate organizations and would like to be included in this one as well as any future ones.

R. Dodds stated the Board appreciates their service. He knows there was an issue with the facility on Route 12. D. Pierce stated the ordinance does provide that the emergency plan be filed with the emergency squad and the fire company.

J. Drake, deputy chief of the fire department, stated EffiSolar has contacted them and they are working on the plan. The rescue squad was informed at that time. He stated all the ordinances have been provided to the rescue squad.

P. Lubitz stated the issues discussed this evening happened previously. The emergency plan will be worked out with the rescue squad and the fire company from this point forward. J. Guinco stated that the rescue squad and fire company will be consulted.

It was moved by J. Mathieu, seconded by S. McNicol and carried to grant final site plan approval to Phase I and resolution compliance with Phase I and II of Preliminary Approval. All members present voted **AYE** on **ROLL CALL VOTE**.

J. Strasser resumed his position on the Board at this time.

T. Kratzer recused himself from his position on the Board for the following matter.

**Sundancer – Block 24, Lots 4 & 7 – Muddy Run & Barbertown Pt Breeze Rd – Completeness Amended Preliminary and Final Site Plan Approval**

D. Pierce stated the applicant included in their letter a request for amended preliminary site plan approval as an abundance of caution. There is a minor change on the interior road. There will be testimony from R. Pelizzoni that he believes it is a minor change that would not require an amended site plan approval. It can be approved as part of the final site approval. He stated there is no impediment to the Board proceeding with the matter.

W. Harrison stated he concurs with D. Pierce that he would not have to amend preliminary approval.

R. Pelizzoni was sworn in by D. Pierce.

R. Pelizzoni described the minor change and the reason for the change. He stated shortly before the applicant was before the Board for the preliminary hearing, they received their LOI from the DEP. The final LOI enlarged some of the wetlands area in the center of the site. The original road came right through the little piece of wetlands that necessitated a GP10A permit for driveways. He has discussed the issue with A. Greene, wetlands consultant. If the applicant takes all the areas together, it will exceed the allowance from the state permits. Their choice was to move the entrance on Barbertown Point Breeze Road or looked at the proposed interior road to get from one side to the other. It was the smallest encroachment area and the revised location looped the road around the wetlands. He stated, except for #16 in T. Decker's review letter, the applicant complies with all the comments. He stated all the requested notes will be added to the plan.

W. Harrison stated he will work with D. Pierce on the resolution on the time of the submission of the conditions.

T. Decker stated with regard to the driveway alignment, he has no objection and agrees with D. Pierce that it would not be an amendment to the approval. It is more of a field change. He stated, as with the previous application, certain items would be carried forward as conditions of preliminary approval.

D. Pierce stated preliminary condition #11 should be revised to provide for approval by the rescue squad, #17 should include a requirement to note the prohibition of trimming of the trees, which is not in the maintenance plan, note the maintenance plan refers to the use of herbicides and pesticides for pests and weed control, which is not permitted in the ordinance, #28 which should include the applicant submit an engineer's estimate and #36 to revise to include a video. He stated #54 requires that the fence fabric should be a woven material of an earth tone color. D. Banisch stated he has spent some time researching this situation. The colors that are available are green and dark green. He has done research to define earth tone and green is included in the palette of earth tone. The color is still subject to his approval. D. Pierce stated his concern was if dark green included in the definition of earth tone no change to the condition would be required. He also suggests the Board revise #58 which requires a payment in lieu to the Township for construction improvements to reference the exact dollar amounts of \$8,895 for Barbertown Point Breeze Road and \$18,331 for Muddy Run Road.

W. Harrison stated he is in agreement with all the above revisions.

S. McNicol inquired about page #3 of the plats which detail the buffers. The plans show the solar arrays intruding into the buffer. R. Pelizzoni stated there is a provision that allows encroachment into the wetland

buffers as long as the project gives back what it takes away. On the plan where it says a minus, the buffer is reduced and where you see pluses, they give wetlands back. The plan encroaches 39' into the 50' buffer. They are giving back more buffer than they are taking away. It is part of the transition waiver permit. D. Pierce stated it is referenced in condition #9 of the preliminary approval.

J. Mazzucco was sworn in by D. Pierce.

W. Harrison stated the Board previously accepted J. Mazzucco as an expert.

J. Mazzucco stated on the first page of the landscaping plan, the area west of Lot 5 and in response to the comments by D. Banisch, the size of the plantings have been changed from 6-8' to 8-10' in height which will help increase the buffer between the adjacent property and the panels. Across from the Garay residence, it was noted that the buffer was inadequate. They shifted the shade tree to the west and two evergreen trees were added to increase the buffer area. The plantings would be subject to post construction inspection by D. Banisch. Most of the comments were to the maintenance specifications with minor changes to the pruning notes. There is an indication referring to the gator bags. The applicant has done research with regard to Canary Reed Grass and has conferred with the Hunterdon County Soil Conservation District and it is not an acceptable use for this application. It is listed as an invasive species and aggressive grower. He is in agreement with the comments contained in T. Decker's and D. Banisch's review letters. The use of pesticides and herbicides would be a last resort. Rye grass will be used instead of the Canary Reed Grass as suggested by the Hunterdon County Soil Conservation District.

D. Banisch stated the maintenance plan needs to be consistent with the ordinance.

R. Dodds stated the ordinance specifically prohibits the use of herbicides and pesticides.

D. Pierce stated the following conditions of preliminary approval can be eliminated: #16, #42, #52 b, f, h, i, j, k and 57. An additional condition to final approval would be that the applicant revise the plans and project documents to be consistent with the items contained in T. Decker's memo of January 11, except for the Reed's Canary Grass and the report of D. Banisch dated January 12, the applicant submit one electronic and hard copy of the plat and the developer's agreement with the Township Committee.

W. Harrison stated the gray area will be a conservation easement. W. Harrison stated the area that would be open to public access is at the southwest corner of the property. R. Pelizzoni stated it is indicated on sheet #2. W. Harrison stated it is an existing open space area that borders the property to the south. It is the area that was set forth in the litigation settlement. He stated he has had a little difficulty reaching the Township historian. As part of the wetlands permit application, the applicant is required to perform a cultural resource survey. If it is found the structures have a historic significance, a photograph will be taken and a plaque placed on the property.

It was moved by S. McNicol, seconded by D. Haywood and carried to grant final site plan approval subject to the amendments to the conditions of preliminary approval discussed tonight as well as the additional conditions discussed for final this evening.

J. Drake stated he had a concern regarding the location of the inverters. He stated the fire company has to have access to the inverters to shut off the array. R. Pelizzoni stated it is at the end of the driveway. J. Drake inquired if the jog in the road changes the width and makes the turns too tight. R. Pelizzoni responded the road width was maintained and has a larger radii. J. Drake stated the Knox box keys cannot be provided to the rescue

squad. All of the sites will be dual dispatches which would provide more manpower. C. Compton stated she has not been kept informed but that should work.

W. Harrison stated the fire company and rescue squad will be contacted within the next couple of weeks for training, slightly after the end of the month.

It was moved by S. McNicol, seconded by D. Haywood and carried to grant final site plan approval subject to the amendments to the conditions of preliminary approval discussed tonight as well as the additional conditions discussed for final this evening and requiring the location of the inverters be subject to the approval of by the fire company for the purposes of insuring appropriate access. All members present voted **AYE** on **ROLL CALL VOTE**.

T. Kratzer resumed his position on the Board.

### **Proposed Ordinance Flood Plain District – As Per FEMA Amendments**

D. Banisch stated the purpose is for the Township to maintain its eligibility in the flood insurance program. The amendments are responsive to the direction the Township was provided by the DEP. It provides for modest changes to the ordinance. It will update all the mapping and provide for a new series of maps. There are a couple of minor text changes in Section 1, 2 and 3 of the ordinance. No. 4 was restructured.

It was moved by J. Mathieu, seconded by D. Haywood and carried to recommend to the Township Committee the adoption of the above proposed ordinance is not inconsistent with the Master Plan. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Proposed Ordinance Attached Affordable Housing as Permitted Use in All Zones**

D. Banisch stated the adoption of this ordinance amendment will save the Habitat for Humanity from going before the Board of Adjustment for a use variance. The Planning Board is best suited to deal with the application. It will allow this type of development only when it is municipally sponsored. The proposed property for the development is on Union Road, the Ukarish farm. The project will be built by volunteers and the future residents who will ultimately live in the houses. The proposed ordinance provides affordable housing in every zone in the Township for projects that are municipally sponsored or an authorized project. The Township is still working off a prior round obligation. D. Banisch stated the Township could possibly see an application in a month.

P. Lubitz stated the Township is in contract with Habitat for Humanity to construct the project.

D. Banisch stated the 3<sup>rd</sup> round is not yet defined. The methodology of affordable housing is yet undetermined. It is unknown how the obligation will be determined. The Township will have a 3<sup>rd</sup> round number at some point.

P. Lubitz stated the Township has an existing obligation, no matter what happens to COAH in the future. As long as the Township is making progress on that application, it is afforded some protection from a builder's remedy lawsuit. Kingwood has had an affordable housing plan to build multi-unit housing units on that site since 2002. The difference is that before the Township had its own housing authority to develop that property and now they have contracted with Habitat for Humanity to develop the property.

T. Kratzer inquired if the obligations assigned by COAH in Round 1 and 2 still exist. P. Lubitz responded no action has done away with those obligations.

D. Pierce stated there is no construction in the Township that satisfies the obligations of Round 1 and 2. The Township does have some credits for the Easter Seal house on Route 519. P. Lubitz stated the house provides 5 credits.

T. Kratzer stated the ordinance will allow affordable housing universally throughout the Township. D. Banisch stated the ordinance provides for the housing in all zoning districts because an opportunity can arise in another zoning district. T. Kratzer inquired what will happen when the Township satisfies the obligations. D. Banisch stated he is not sure if the Township will get to that day.

D. Banisch read the provisions of the ordinance. He stated the keys words were “municipally sponsored or authorized attached affordable housing”.

E. Niemann stated a question came up because the Township is so far behind on satisfying its obligation, would a developer be able to coerce an authorization from the municipality because the Township had not met its obligation. D. Banisch stated his initial reaction would be that a developer would not want to build attached affordable housing. A developer might want to do it for market rate units.

P. Lubitz stated the greater coercion is that the Township is not making a good faith effort to meet its obligation. That is where a municipality runs into problems with the DCA and the courts. The result is a builder’s remedy which might provide for an affordable unit for every 4 units and end with the Hills in Bedminster.

T. Kratzer inquired if there were any photos of the units. S. McNicol stated they were available at a Township Committee meeting. D. Banisch stated it is an attached housing two story unit joined together. It is of sufficient mass that it would not look out of scale with the other homes in the Township. It will provide an opportunity for the attached housing to fit into the area a little better rather than smaller detached dwellings.

P. Lubitz stated it is his understanding that when the application comes before the Board, Habitat for Humanity will provide renderings of the units.

T. Decker stated an 8 acre piece of the Ukarish Farm was used for the proposed project.

J. Mathieu stated this type of housing is with the approval of the Township Committee as a sponsor. If the Township does not adopt the ordinance, the application will go before the Board of Adjustment for a variance. The design and concept of this particular project is irrelevant to the ordinance.

T. Kratzer stated it provides for pockets of dense housing in the AR-2 zone. D. Pierce responded it is only allowed to occur if the Township Committee approves or sponsors it. It is not market development. E. Niemann stated the ordinance does not relieve the applicant of the required well and perc testing requirements.

T. Decker stated the well and septic testing has been done. V. Uhl has approved the well testing and offered comments. His comments were incorporated.

P. Lubitz stated any subdivision of any sort that does not meet our well standards will not be built. This would not only apply to this subdivision but any that comes before the Boards.

T. Kratzer stated he wanted to make sure we cover anything.

J. Strasser stated the ordinance allows the affordable housing to be built anywhere in the Township. Affordable housing could be built next to me. He is not sure if he would be happy.

P. Lubitz stated the ordinance is not ruling out affordable housing but providing for the ability for attached housing. Habitat for Humanity's offered the option to build eight single units as opposed to four duplexes.

D. Banisch stated the fair share plan identifies a few sites in the Township, the Ukarish and Melnyk properties and the Route 12 Business Park. Those sites would knock off the bulk of the housing obligation. The projects must be sponsored by the Township Committee.

J. Strasser inquired if there is a big lot next to his property, duplex affordable housing can be built. D. Banisch responded yes.

J. Mathieu stated the practicality of it is there are no other developers chomping at the bit other than Habitat for Humanity or a charitable organization.

S. McNicol inquired if after the Ukarish and Melnyk properties are developed with affordable housing, the Township is out of property to develop. The ordinance then would allow the units to be built in other parts of the Township. J. Mathieu responded only with the approval of the Township Committee.

P. Lubitz stated an affordable housing unit can be built next to J. Strasser's house whether or not we pass this ordinance. The ordinance allows duplex units.

D. Banisch stated the ordinance pertains to duplexes but is silent on the number of units.

J. Mathieu stated the application has to be conforming. The ordinance is to solely make it universally permitted in the Township.

D. Banisch stated the primary effect is that the application that is being submitted by Habitat to the Township will come before the Planning Board rather than the Board of Adjustment. P. Lubitz inquired what would be the downside to limiting the area to the Ukarish, Melnyk and Route 12 Business Park for affordable housing. D. Banisch stated the Township would end up with spot zoning. P. Lubitz responded which is illegal.

T. Kratzer inquired about the number of bedrooms in the units. D. Banisch responded three. T. Kratzer inquired what the minimum salary was for eligible participants. P. Lubitz responded the minimum salary range is between \$40,000 - \$60,000. T. Kratzer stated originally it was \$77,360 for four people, all inclusive. The amount changes year to year from his understanding of it. At any given time if that is the fact, people could be coming in here with lots of kids. We would then have to look at the school district as well which is another tax issue. This is going to happen no matter who comes into these units. He inquired if the developer or builder owns them now and has to take care them so the development will have people coming in almost immediately. P. Lubitz stated the people who come in own the buildings. T. Kratzer stated once they are put up you are going to have someone in them immediately. D. Banisch stated they will be owner occupied. T. Kratzer stated they are going to be more eligible because of the cost of the unit and will be occupied a lot quicker because they will be lower cost. At the same time, they will bring in a possible influx, depending on the number of units the Township will need, to the school district and infrastructures. P. Lubitz stated that decision is out of the Township's hands. The Township has to provide for this housing in some manner, whether it is at the Ukarish farm or any place else. If we do not do it then there is the builder's remedy. T. Kratzer stated he understands all that. He wants to make sure that the Township realizes what it is going to get into in the long run and how

we are going to handle it with the AR-2 zone possibly open for any area to be used for this use. They are going to be habited pretty quickly once they are built. D. Banisch stated Habitat is going to undertake a community outreach program and they are going to try to attract people who live in Kingwood Township. There will be a marketing effort beyond Kingwood's boundaries to attract eight income eligible families for these homes. P. Lubitz stated there will be two information sessions at Kingwood school for the purpose. The Township requested they do those information sessions in Kingwood to attract Kingwood residents and to make people aware of what they are getting into if they do go for these houses with the rural character of the Township. They will know they are going to need their own transportation. They will know they are going to have to travel for grocery stores. J. Mathieu stated it is rather shocking what lines up in these units. You can go to Sergeantsville and drive by the affordable housing and look at the Volvo's and BMW's and the Toureg's. S. McNicol stated she has looked into that and that particular development was not all affordable housing. P. Lubitz stated the front strip is affordable housing. P. Lubitz stated another way a municipality meets their requirement is to allow a greater density for development with the agreement that they in turn will build the affordable housing. One idea that is open to Kingwood is to take a large plot of land and have a big Toll Brother's style development. Grant the people the approval because requirements are that we give some favor in greater density and they in turn agree to build affordable housing. The Township could have a development with the eight units at four to one or could have a forty unit development that would give us the same eight units. That is the alternative that we have.

D. Banisch stated the inclusionary zoning under the existing regulations requires a 40% increase in density with a minimum of a 20% set aside for affordable housing within the overall density.

J. Strasser inquired if you could put eight homes on eight acres and satisfy the well and septic requirements why is the Township's seven acre exclusionary zoning meeting muster. The reason the Township has the seven acre zoning is because the science supports it otherwise the Township does not have a right to do it. He stated the Township does not need the seven acre zoning based on the proposed project. D. Banisch stated you will find a range of densities that support the current nitrate dilution standards which are right around seven acres and will probably range from high 6's to high 9's and maybe a couple over 10 based on your soils. The eight acres was part of a much larger tract initially. If you were to look at it you would have a lower density than is otherwise permitted. J. Strasser stated with those comments how can that be done in other parts of the Township without having that same kind of acreage behind it supporting as open space. J. Strasser stated that would then preclude someone from building next to him. D. Banisch stated in the current ordinance the Township has mandatory clustering and lot size averaging based on a minimum lot size requirement of seven acres. The ordinance does require the open space set aside adjacent to that subdivision where lot size averaging is employed and lots are reduced down to two acres. It is a deviation from the existing ordinance standards, probably considerable since the lots will be smaller than an acre. J. Strasser inquired if the ordinance will require that other property put into open space because of the science. D. Banisch responded the amendment does not provide for that requirement. The ordinance provides for the projects to be municipally sponsored or authorized. The governing body is holding their minimum lot size requirements in the Township for supportable density. The other ordinances are required for new development. It is his opinion that the governing body will make a prudent decision as the opportunities arrive.

T. Kratzer stated he will have to review V. Uhl's comments with regard to the well testing. He inquired how many wells were put in on the property. Ground water recharge is a terminology they use in certain geological surveys flat side. Ground water recharge only goes down to the root zone. That is the definition. Aquifer recharge goes into the ground water reserve. You could have twenty acres but you could not have the fractures necessary anywhere in that location. T. Kratzer stated D. Banisch previously commented if you group everything together and have all this area around it you will get your recharge. You won't necessarily. Nitrate

dilution is based on recharge. It has to come into play because that is what the dilution is. These are things you have to be careful of for the Township's planning.

M. Syrnick stated if the eight units do not pass any of the well and septic requirements. They cannot be built.

T. Kratzer stated what was said is that we have all this area around it which will provide the necessary recharge. He stated that is not quite right. If we start doing this at other locations, it is site specific. The NJ Geological Survey does it on an aerial basis. D. Banisch stated if he said groundwater recharge he was speaking of nitrate dilution. T. Kratzer stated it is the same thing. You need the groundwater recharge to have the dilution capacity. If you don't, you will not meet your standards. You will not always get your recharge.

J. Strasser stated he is afraid that the Township will set a precedent by making this decision. A builder comes in and says how did they get away with it over there because I want to put in eight units on eight acres over here and I don't want it to be low cost housing. He is just concerned about the science. In his mind the only reason we have seven acre zoning is because of the science. The Township has no right to have it but the science says you must have it unless someone brings in a septic system or sewer system into the Township. Those are his concerns. J. Mathieu responded a developer who wants to come and build market development cluster housing would be absolutely forbidden to do so because this ordinance is only for municipal sponsored and approved affordable housing. J. Strasser stated that is not the key. The key is the science. He stated the Township has no right to do it if the science does not back it up.

P. Lubitz inquired of D. Pierce, pertinent to J. Strasser's point because it is an important point, if a developer wants to come and wants a lower density, it is his understanding or belief that there arguments that the zoning is exclusionary. D. Pierce responded the developer who comes in and wants a lower density makes an argument that the density requirements are somehow arbitrary and capricious and there is no support for it. In regard to J. Strasser's question regarding the science, the science is only one aspect of the justification for the density and lot size requirements. It is absolutely acceptable in a rural community like this to base lot size on the desire to maintain rural character of the area. It is a valid zoning principle and practice. It is a combination of the two not just one.

P. Lubitz stated part of the defense is that we granted the greater density because of the public benefit that is written into the ordinance for affordable housing. D. Pierce stated that would be the justification for the granting of a use variance for this type of use. There is a benefit to the general public by allowing this greater density use and there is the reason, just like the solar developments, it is inherently beneficial to make it a conditional use under these circumstances. It is not written in the ordinance as part of the justification for it but that is the rationale for it. It is a public benefit that justifies it. Even without this ordinance, anybody can come in for a use variance.

J. Strasser stated you summed it up for me that it should not be before the Planning Board. The application should have to appear before the Board of Adjustment. That is different. There is a justification for doing it. Once the Township starts doing it on the Planning Board, we are changing the planning. He thinks this application should go before the Board of Adjustment based on D. Pierce's prior comments. D. Pierce stated it is part of the duty and job of the Township Committee to evaluate policy within the Township and to anticipate things such as this application and try to develop policies to streamline applications that have a real public benefit. It is only those types of applications that the Township Committee will authorize or sponsor. He understands J. Strasser's point.

S. McNicol stated a builder's remedy could not use this ordinance because it is specifically municipal sponsored projects. D. Pierce stated he would expect them to argue that the Township did it here so they should be able to

do it over here. The developer will use whatever argument they can. The developer is only entitled to a builder's remedy if the Township hasn't take action to satisfy its affordable housing obligations.

T. Kratzer inquired if the Township has a developer come in and put in five units and one has to be an affordable housing unit but the market does not allow him to build them all at the same time, can the Township require him to build the affordable housing unit first? D. Pierce responded the 3<sup>rd</sup> round COAH regulations disallowed that requirement. At this point and time the Township cannot impose that type of obligation. P. Lubitz stated the problem with that obligation was if building that one affordable unit for the four that they were building, it was a 3<sup>rd</sup> round formula and that only satisfied the four units that were being built. It did not do anything for the Township's prior obligation of 29 units. The Township has to meet the 29 units before we can do anything going forward. D. Pierce stated it also included a density bonus to the developer by allowing more density than the Township's ordinance allowed because they are putting in the affordable unit.

T. Kratzer stated he has a problem with the density and the acreage involved with it and would also like to take another look at what type of designs they have available and what this might look like because they will be put in on Route 519. Just wants to look at it more in depth. P. Lubitz stated T. Kratzer will have that opportunity when they submit their application. T. Kratzer stated but not for the ordinance. M. Syrnick stated if we do not pass this ordinance the Planning Board will not have the opportunity to look at the project at all. E. Niemann stated it would go before the Board of Adjustment or they could bring us eight houses, which would be much less attractive in her opinion.

J. Mathieu stated the key to it is it is a very limited application. It is at the pleasure and direction of the Township Committee. It does not seem to be the type of application that will be at every other meeting with someone coming in for affordable housing.

P. Lubitz stated he is all ears for someone who can come up with a way for the Township to meet its affordable housing obligation.

J. Strasser stated he believes when and if the housing market break and it will, there will be much smaller homes being built. He is very concerned and does not want to set a precedent. He will vote no on the proposed ordinance. He stated this type of application should have to go before the Board of Adjustment. T. Kratzer was in agreement with him.

E. Niemann stated the Township is trying to promote affordable housing in the township and should these applicants have to go before the Board of Adjustment it will hamstring those owners with future expenses any time they want to do something to their residence. D. Pierce stated the Board should establish in the approving resolution the setbacks particular for those houses and keep in mind that the Township does not want to make them come back in if they want to put a deck on the house. It can be addressed in the conditions of approval.

P. Lubitz stated he respected J. Strasser's thoughts and important to have someone that has a different point of view so you can consider all sides of the issue. One of the downsides to making people go before the Board of Adjustment each time is it adds to the expense of trying to build an affordable housing unit. It is adding thousands of dollars to the cost of the unit. D. Banisch stated the variance relief that is required would need five affirmative votes for approval. It is not an impossible burden to overcome but can be burdensome.

R. Dodds inquired what would happen if the Board of Adjustment denied them. D. Banisch responded they could not come back and make application again. They would have to change the application in some manner.

J. Mathieu stated the standards would always be different. There would be no uniform set of standards. We will forfeit the opportunity to have standards if the Township allows each one to go before the Board of Adjustment.

D. Pierce stated in the event that the Board sustains a motion to recommend adoption to the Township Committee there are two changes the Board should recommend:

Specify a lot size – the reason is if there is a variance from the permitted density required, they have to go before the Board of Adjustment as well;  
Reconsider if it would be appropriate to apply the ordinance to Byram Colony.

The professionals discussed the above amendments among themselves.

### **2012 Budget Request**

After a short discussion and based on last year's expenses, the Board requested \$30,000. The Board requested a quarterly statement of the other expense line item.

### **Continued discussion on Proposed Ordinance No. 17-01-2012:**

D. Pierce stated that D. Banisch does not agree it is a density issue. D. Banisch's opinion is that the ordinance is couched in terms of the minimum lot size and it does not specify a density per se. So the density issue is not involved. The applicant could appear before the Planning Board for a "c" variance for minimum lot size. His view of this is that courts will view substance over form. If it has the effect of a density requirement, the court will determine it is a density requirement. The ordinance is written in such a way that the Township allows only single family residences and a minimum lot size of 7 acres for a single family dwelling. By default you have a density of one unit per 7 acres. His concern is not so much whether it is or not a density issue but if there is someone who comes out in opposition to the application that is not dealt with within the ordinance, they could make the objection that a density variance is required and the Planning Board does not jurisdiction. Unless there is provision in the ordinance for that it opens an application up for challenge and ultimately sends it to the Board of Adjustment. He is providing the Board with both perspectives.

T. Kratzer inquired if the application would go before the Board of Health. D. Pierce stated there is no change to the septic or well ordinance so it would not go before the Board of Health.

D. Pierce stated J. Strasser's concern is he is not worried about the current Township Committee approving a development that would go in different places in the Township but possibly someone might have a scheme to make money and the future Township Committee may not be so circumspect in avoiding additional development and more lax in approving these types of developments in other areas of the Township.

J. Strasser stated once you set the precedent, why can't a builder come in and challenge the requirements? D. Banisch responded they can bring the case and it would go to court and be in the hands of the judge whether it is appropriate or not. He thinks it can be defensible.

D. Haywood stated the ordinance is talking about a small part out of a larger lot and the larger lot is preserved. The ordinance will require those conditions. D. Pierce stated the ordinance does not require the larger lot.

It was moved by J. Mathieu, seconded by S. McNicol and carried to recommend to the Township Committee the adoption of the above proposed ordinance is not inconsistent with the Master Plan with the following amendments:

Specify a minimum lot size;  
Deletion of #6.

All members present voted **AYE** on **ROLL CALL VOTE**, except T. Kratzer and J. Strasser, who voted **NAY**.

T. Kratzer stated he is not against affordable housing but minimum lot size is very significant in the equation. How is the minimum lot size going to be determined? D. Banisch stated approximately 20,000 sq ft.

D. Banisch stated there are few exceptions of land use in a community where the municipality can justify going far outside the requirements they have set up. Affordable housing is one of those exceptions.

J. Strasser stated there might be a plan along Route 12 which would build a package plant. He is not prepared to talk about this tonight. It is not something for the Planning Board but should be applied to the Board of Adjustment. If the costs are too expensive, the Township could relieve some of the fees.

D. Pierce stated the applicant has to have a planner to testify and a use variance requires a stenographer.

S. McNicol stated when she is ready to sell her house, possibly in 10 to 15 years, and her septic fails at that time and with the cost involved for the repair or replacement, how are these low income people going to manage this type of expense? With the condensed lot size you have the potential of problems developing with the septic systems. These expenses are going to be a problem with these residents.

## **CORRESPONDENCE**

Bayer Risse – Planning Board Engineer Services for 2012

T. Decker it is not unusual for a Township to have an alternative conflict engineer. He stated he doesn't think there has been an issue in the last six years.

T. Decker and D. Banisch left the meeting at 10:36 PM.

## **PRIVILEGE OF THE FLOOR**

J. Keller inquired why he was not allowed to speak when the Sundancer application was addressed by the Board.

D. Pierce stated that Sundancer was concerned because they made a change in the road the Board may require them to amend their preliminary site plan and require a new hearing. The Board's decision was that it was not a substantial change but an engineering adjustment within the development and did not require an amendment to the site plan or require a public hearing. Final site plan approval is not required to have a public hearing. The purpose of a final site plan hearing confirms that the drawings have been changed and continue to satisfy preliminary approval.

F. Floyd thanked the Board for the opportunity to speak this evening. He stated he does not know where the breakdown was in communication between the fire company and the rescue squad. He stated C. Compton was there at the meeting and there haven't been any recent communications with the solar companies. He stated he intends to be present at the meetings.

R. Dodds stated there are two alternate positions that are open and the Mayor will contact him.

**Approval of November 10, 2011 Minutes**

It was moved by P. Lubitz, seconded by S. McNicol and carried to approve the minutes of November 10, 2011. All members present voted **AYE** on **ROLL CALL VOTE**, T. Kratzer and M. Syrnick, who **ABSTAINED**.

**Approval of December 8, 2011 Minutes**

It was moved by M. Syrnick, seconded by E. Niemann and carried to approve the minutes of December 8, 2011. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu, who **ABSTAINED**.

**APPLICATION STATUS**

**ADJOURNMENT**

It was moved by J. Mathieu, seconded by P. Lubitz and carried to adjourn the meeting at 10:44 PM. All members present voted **AYE**.

**Respectfully submitted,**

**Diane Laudenschach, Secretary**